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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JOSE LEDESMA,

12 Plaintiff,

13 v.

14 J. TYREE, et al.,

15 Defendants.  
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1:13-cv-01227-AWI-EPG-PC

SCREENING ORDER

FINDINGS AND RECOMMENDATIONS  
THAT PLAINTIFF'S SECOND  
AMENDED COMPLAINT PROCEED  
ONLY AGAINST DEFENDANTS  
ADAME, TYREE, AND LUNDY FOR  
EIGHTH AMENDMENT VIOLATION  
BASED ON CONDITIONS OF  
CONFINEMENT, AND ALL REMAINING  
CLAIMS AND DEFENDANTS BE  
DISMISSED WITH PREJUDICE

OBJECTIONS, IF ANY, DUE IN 20 DAYS

(Doc. 9)

21 Plaintiff Jose Ledesma ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*  
22 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This Court<sup>1</sup> previously  
23 screened Plaintiff's initial complaint and found that it stated claims under the Eighth  
24 Amendment against Defendants Tyree and Lundy for unconstitutional conditions of  
25 confinement, but not other claims. ECF No. 9. The Court gave Plaintiff leave to file an  
26 amended complaint.  
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<sup>1</sup> All orders prior to the current order were issued by Magistrate Judge Gary Austin.

1 Now before the Court is Plaintiff's Second Amended Complaint, dated October 13,  
2 2015. (ECF. No. 9)

3 **I. SCREENING REQUIREMENT**

4 The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
6 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
7 legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or  
8 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
9 § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been  
10 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
11 appeal fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

12 A complaint is required to contain "a short and plain statement of the claim showing  
13 that the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
14 are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by  
15 mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct.  
16 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955  
17 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge  
18 unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)  
19 (internal quotation marks and citation omitted). Plaintiff must set forth "sufficient factual  
20 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal 556 U.S.  
21 at 678. While factual allegations are accepted as true, legal conclusions are not. Id. The mere  
22 possibility of misconduct falls short of meeting this plausibility standard. Id. at 678-79; Moss  
23 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

24 **II. SUMMARY OF SECOND AMENDED COMPLAINT**

25 On or about October 26, 2011, Plaintiff arrived at the California Corrections Institution.  
26 He was held in the "receiving and release" area and subjected to a strip search by Officers  
27 Adame and Medrano. After the strip search, Officers Adame and Medrano placed Plaintiff in  
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1 waist chains, put mits over Plaintiff's hands, shackled Plaintiff's ankles, and taped Plaintiff's  
2 boxers to Plaintiff's thighs.

3 For the next 16 days, Plaintiff was kept on contraband watch. The holding tank is 2 to 3  
4 feet from the entrance door, and the bottom has a 6 to 7" gap. Plaintiff was very cold. The  
5 tank was dirty and bed-infested. Defendant Adame told Plaintiff "after tonight your [sic] going  
6 to wish you had cooperated with us and worked with us from the beginning." There was no  
7 blanket, mattress, shower, change of clothes, or tooth brush. The restraints were kept on  
8 throughout so that Plaintiff could not stretch. The restraints cut Plaintiff's wrists and ankles.  
9 Bright lights were kept on at all times.

10 All defecation and x-rays showed up negative for contraband.

11 Plaintiff submitted a grievance, but the appeals coordinator failed to respond.

12 Plaintiff asserts claims for cruel and unusual punishment in violation of the Eighth  
13 Amendment, violation of the First Amendment access to the courts, and retaliation in violation  
14 of the 14<sup>th</sup> Amendment.

### 15 **III. CONDITIONS OF CONFINEMENT**

#### 16 **a. Legal Standards**

17 "It is undisputed that the treatment a prisoner receives in prison and the conditions  
18 under which [the prisoner] is confined are subject to scrutiny under the Eighth Amendment."  
19 Helling v. McKinney, 509 U.S. 25, 31 (1993); see also Farmer v. Brennan, 511 U.S. 825, 832  
20 (1994). Conditions of confinement may, consistent with the Constitution, be restrictive and  
21 harsh. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981); Morgan v. Morgensen, 465 F.3d  
22 1041, 1045 (9th Cir. 2006); Osolinski v. Kane, 92 F.3d 934, 937 (9th Cir. 1996); Jordan v.  
23 Gardner, 986 F.2d 1521, 1531 (9th Cir. 1993) (*en banc*). Prison officials must, however,  
24 provide prisoners with "food, clothing, shelter, sanitation, medical care, and personal safety."  
25 Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986), abrogated in part on other  
26 grounds by Sandin v. Connor, 515 U.S. 472 (1995); see also Johnson v. Lewis, 217 F.3d 726,  
27 731 (9th Cir. 2000); Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982); Wright v. Rushen,  
28 642 F.2d 1129, 1132-33 (9th Cir. 1981).

1           When determining whether the conditions of confinement meet the objective prong of  
2 the Eighth Amendment analysis, the Court must analyze each condition separately to determine  
3 whether that specific condition violates the Eighth Amendment. See Toussaint, 801 F.2d at  
4 1107; Hoptowit, 682 F.2d at 1246-47; Wright, 642 F.2d at 1133. “Some conditions of  
5 confinement may establish an Eighth Amendment violation 'in combination' when each would  
6 not do so alone, but only when they have a mutually enforcing effect that produces the  
7 deprivation of a single, identifiable human need such as food, warmth, or exercise – for  
8 example, a low cell temperature at night combined with a failure to issue blankets.” Wilson v.  
9 Seiter, 501 U.S. 294, 304 (1991); see also Thomas v. Ponder, 611 F.3d 1144, 1151 (9th Cir.  
10 2010); Osolinski, 92 F.3d at 938-39; Toussaint, 801 F.2d at 1107; Wright, 642 F.2d at 1133.  
11 When considering the conditions of confinement, the Court should also consider the amount of  
12 time to which the prisoner was subjected to the condition. See Hutto v. Finney, 437 U.S. 678,  
13 686-87 (1978); Hearns v. Terhune, 413 F.3d 1036, 1042 (9th Cir. 2005); Hoptowit, 682 F.2d at  
14 1258. As to the subjective prong of the Eighth Amendment analysis, prisoners must establish  
15 prison officials’ “deliberate indifference” to unconstitutional conditions of confinement to  
16 establish an Eighth Amendment violation. See Farmer, 511 U.S. at 834; Wilson, 501 U.S. at  
17 303. This Court has found that “placement of seriously mentally ill inmates in the harsh,  
18 restrictive and non-therapeutic conditions of California's administrative segregation units for  
19 non-disciplinary reasons for more than a minimal period necessary to effect transfer to  
20 protective housing or a housing assignment violates the Eighth Amendment.” Coleman v.  
21 Brown, 28 F. Supp. 3d 1068, 1099 (E.D.Cal. 2014).

22                   **b. Analysis of Plaintiff’s Allegations**

23           The Court finds that Plaintiff has stated a claim for violation of the Eighth Amendment  
24 for unconstitutional conditions of confinement against Defendants Adame, Lundy, and Tyree  
25 based on their role in confining Plaintiff for 16 days to a holding cell without the ability to  
26 move unrestrained, and without blankets, showers, and other basic necessities.

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1           **IV.           ACCESS TO THE COURTS**

2           **A. Legal Standards**

3           Under the First Amendment, prisoners have the right to access the courts and the right  
4 to petition the government for a redress of grievances. See Bounds v. Smith, 430 U.S. 817, 821  
5 (1977). To establish a violation of the right of access to the courts, a prisoner must establish  
6 that he has suffered an “actual injury” as a result of a prison official's misconduct. See Docket  
7 No. 15 at 8 (citing Lewis v. Casey, 518 U.S. 343, 351–52 (1996)). An “actual injury” exists  
8 where a prisoner has been “hindered [in his] efforts to pursue a legal claim.” Id. at 351; see also  
9 Silva v. Vittorio, 658 F.3d 1090, 1102–03 (9th Cir. 2010) (recognizing that access-to-courts  
10 claim requires an actual injury to court access), overruled on other grounds as stated by Richey  
11 v. Dahne, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015).

12           **B. Analysis of Plaintiff’s Allegations**

13           Plaintiff has failed to allege a constitutional violation for access to the courts here.  
14 Plaintiff alleges that the prison has mishandled or ignored his grievance. At this point, Plaintiff  
15 has not been hindered in his efforts to pursue his legal claim based on the prison’s response to  
16 his grievance. These allegations will be relevant in determining whether Plaintiff has  
17 exhausted his administrative remedies and can go forward with this lawsuit on its merits. But  
18 the prison’s failure to address the grievance properly itself does not raise an independent  
19 constitutional claim.

20           **V.           RETALIATION**

21           **A. Legal Standards**

22           Prisoners have a First Amendment right to file grievances and pursue civil rights  
23 actions. Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2005) (citation omitted); Bradley v.  
24 Hall, 64 F.3d 1276, 1279 (9th Cir. 1995) (prisoners have a constitutional right to meaningful  
25 access to the courts, and prison authorities may not penalize or retaliate against an inmate for  
26 exercising that right), overruled on other grounds by Shaw v. Murphy, 532 U.S. 223 (2001).  
27 Thus, allegations of retaliation against an inmate’s exercise of First Amendment rights may  
28 support a civil rights claim. Rizzo v. Dawson, 778 F.2d 527, 531–32 (9th Cir. 1985); Pratt v.

1 Rowland, 65 F.3d 802, 806 & n. 4, 807 (9th Cir. 1995) (retaliation claims “fall within the other  
2 protections from arbitrary state action ... because they are based upon protection of the  
3 prisoner's First Amendment rights, and not their Due Process rights”) (citation, alteration and  
4 internal quotation marks omitted).

5 “A viable claim of First Amendment retaliation entails five basic elements: (1) an  
6 assertion that a state actor took some adverse action against an inmate (2) because of (3) that  
7 prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First  
8 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional  
9 goal.” *Rhodes*, 408 F.3d at 567–68 (alterations omitted).

#### 10 **B. Analysis of Plaintiff’s Claims**

11 Plaintiff does not state an independent violation based on a retaliation claim. Plaintiff’s  
12 retaliation claim alleges the same facts regarding “being shackled, having clothes taped around  
13 plaintiff’s hands” and similar allegations that relate to his conditions of confinement, as  
14 addressed above. Plaintiff does not allege that these actions were done because of Plaintiff  
15 exercising some protected rights.

### 16 **VI. CONCLUSION**

17 Plaintiff has stated a claim against Defendants Adame, Tyree, and Lundy for violations  
18 of the Eighth Amendment based on conditions of confinement. Plaintiff has failed to state any  
19 other claims, or claims against any other defendants.

20 Plaintiff has already been given leave to file an amended complaint with instructions  
21 regarding the law to inform that amended complaint. The Court does not believe further  
22 amendment would cure the deficiencies in the remaining claims and defendants.

23 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 24 1. This action proceed only against Defendants Adame, Tyree, and Lundy for  
25 violations of the Eighth Amendment based on conditions of confinement;
- 26 2. All remaining claims and defendants be dismissed from this action.

27 These Findings and Recommendations will be submitted to the United States District  
28 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within

1 **twenty (20) days** after being served with these Findings and Recommendations, Plaintiff may  
2 file written objections with the Court. The document should be captioned “Objections to  
3 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
4 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
5 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
6 (9th Cir. 1991)).

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8 IT IS SO ORDERED.

9 Dated: June 24, 2016

10 /s/ Eric P. Gray  
11 UNITED STATES MAGISTRATE JUDGE  
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